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& Casualty Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

STATE FARM FIRE & CASUALTY  
COMPANY,

Plaintiff,

vs.

STUART H. SMITH and JUSTIN BISCHOF,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**  
**AND DEMAND FOR JURY TRIAL**

Plaintiff, **STATE FARM FIRE & CASUALTY COMPANY**, by and  
through counsel of record, Hughes Gorski Seedorf Odsen & Tervooren, LLC, for its  
complaint against Stuart H. Smith and Justin Bischof states and alleges as follows:

1. State Farm Fire and Casualty Company is an Illinois corporation that maintains its Statutory Home Office and Main Administrative Office at One State Farm Plaza, Bloomington, Illinois 61710-0001.

2. Defendant Stuart H. Smith is a resident of the State of Florida.

3. Defendant Justin Bischof is a resident of the State of Ohio.

4. This lawsuit is brought for declaratory judgment pursuant to 28 U.S.C. § 2201. This court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(a) in that it is between citizens of different states and the amount in controversy exceeds \$75,000.

5. State Farm issued a Homeowners Policy, No. 35-BD-E378-5, ("the Policy") in Ohio to Justin and Erin Bischof.

6. The Policy was in effect on June 27, 2009 and provides up to \$300,000 in personal liability coverage for covered claims. A copy of the Policy is attached as Exhibit A.

7. The applicable insuring language in the Policy provides:

If ... a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an **occurrence**, we will ...

8. The Policy defines an "occurrence" in pertinent part as:

[A]n accident, including exposure to conditions, which results in:

- a. **bodily injury**; or
- b. **property damage**;

during the policy period.

9. The Policy defines “**bodily injury**” in pertinent part as “physical injury, sickness, or disease to a person.”

10. The Policy defines “**property damage**” in pertinent part as “physical damage to or destruction of tangible property, including loss of use of this property.”

11. The Policy contains the following exclusion:

1. Coverage L ... do[es] not apply to:

a. **bodily injury or property damage:**

(1) which is either expected or intended by the **insured**; or

(2) which is the result of willful and malicious acts of the **insured**;

12. On October 11, 2010, Stuart H. Smith initiated a Complaint in the Superior Court for the State of Alaska at Juneau, captioned *Stuart H. Smith v. Justin Bischof and Michael Bruckert*, Case No. 1JU-10-899 Civil (“the Complaint”). A copy of the Complaint is attached hereto as Exhibit B. By filing the Complaint in the Superior Court for the State of Alaska at the First Judicial District in Juneau, the jurisdictional

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threshold of which is at least \$100,000 in claimed damages, Stuart H. Smith is seeking more than \$100,000 in damages in the Complaint.

13. In the Complaint, Stuart H. Smith asserts claims for assault against Justin Bischof for events alleged to have occurred on June 27, 2009 aboard the M/S Seven Seas Mariner while it was en route to Juneau, Alaska from Sitka, Alaska.

14. Specifically, at Paragraph 12 of the Complaint, Stuart H. Smith alleges that Justin Bischof threw "a full force blow of his closed fist into" Smith's "jaw."

15. At Paragraph 13, Stuart H. Smith alleges that the "force of ... Bischof's closed fist punch combined with his size and weight caused [Smith] to lift up off the ground and fall backwards onto the back of his head, knocking him unconscious."

16. Justin Bischof admits that he threw a punch and hit Stuart Smith in the face, but alleges that he did so in self-defense.

17. Justin Bischof has tendered the Complaint to State Farm for defense and indemnity under the Policy.

18. State Farm agreed to provide a defense to Justin Bischof subject to a reservation of rights.

19. The claims in the complaint are not for "property damage" within the meaning of the Policy.

20. Any "bodily injury" alleged in the Complaint was not caused by an "occurrence" within the meaning of the Policy.

21. Because any "bodily injury" alleged in the Complaint was not caused by an "occurrence" within the meaning of the Policy, there is no coverage for Justin Bischof under the Policy for the claims asserted by Stuart Smith.

22. Any "bodily injury" alleged in the Complaint was either "expected or intended" by Justin Bischof.

23. Because any "bodily injury" alleged in the Complaint involves conduct that was "expected or intended" by Justin Bischof, coverage under the Policy for the claims asserted by Stuart H. Smith is excluded pursuant to Exclusion No. 1(a)(1).

24. Any "bodily injury" alleged in the Complaint was "the result of willful and malicious acts of" Justin Bischof.

25. Because any "bodily injury" alleged in the Complaint involves conduct that was "the result of willful and malicious acts of" Justin Bischof, coverage under the Policy for the claims asserted by Stuart H. Smith is excluded pursuant to Exclusion No. 1(a)(2).

26. In light of the positions of the parties, an actual controversy has arisen between plaintiff and defendants with respect to the existence of coverage under the Homeowners Policy for Stuart H. Smith's claims as set forth in the Complaint. Defendant Justin Bischof has asked for coverage for the claims and plaintiff State Farm contends that there is no coverage under the Policy for those claims.

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27. Pursuant to 28 U.S.C. Section 2201, this court has jurisdiction to declare the rights and legal relations of an interested party to an actual controversy.

28. State Farm demands a jury trial on all issues so triable.

WHEREFORE, plaintiff prays for declaratory relief, as set forth above, finding:

1.) That there is no coverage for defendant Justin Bischof under State Farm Fire and Casualty Company Homeowners Policy No. 35-BD-E378-5 with respect to the claims alleged by Stuart H. Smith against Justin Bischof in the Complaint filed October 11, 2010; and

2.) That plaintiff be awarded its costs and attorney fees and such other relief as the court deems just.

DATED at Anchorage, Alaska, this 15<sup>th</sup> day of April, 2011.

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